



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,219	03/26/2004	David L. Kelly	032885-86	8400

7590 01/28/2008  
JOHN K. UILKEMA  
THELEN REID & PRIEST LLP  
P.O. BOX 190187  
SAN FRANCISCO, CA 94119-0187

EXAMINER
----------

GILBERT, WILLIAM V

ART UNIT	PAPER NUMBER
----------	--------------

3635

MAIL DATE	DELIVERY MODE
-----------	---------------

01/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/810,219	<b>Applicant(s)</b> KELLY ET AL.	
	<b>Examiner</b> William V. Gilbert	<b>Art Unit</b> 3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 13-17, 20-23, 28-31, 33-36, 39 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10-12, 18, 19, 24-27, 32, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 3635

**DETAILED ACTION**

This is a First Action on the Merits addressing the response dated 02 November 2007. Claims 1-40 is/are pending. Claims 6-9, 13-17, 20-23, 28-31, 33-36, 39 and 40 is/are withdrawn from consideration. Claims 1-5, 10-12, 18, 19, 24-27, 32, 37 and 38 is/are examined.

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02 November 2007 has been entered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35

U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3635

Claims 1 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 24 recites the limitation "a free distal end" and "a distal end" in claims 1 and 24 (e.g. Claim 1: lines 12 and 14 respectively). Applicant should change the claim language of one of these for clarity as applicant makes two references to "a...distal end" in the same claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 3635

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 5, 19, 24, 27 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robb (U.S. Patent No. 3,830,032) in view of Yung (U.S. Patent No. 4,385,933).

Claim 1: Robb discloses a rebar support chair comprising a table (30) having diametrically opposed ears (28) extending upwardly therefrom, the ears are adapted to engage a rebar, legs (26) having proximal ends fixed to the table, said legs extending downwardly from the table at equally annularly spaced locations there around, the leg being a generally T-shaped cross section (see 26 and one web 48 form a T-shape) having an arcuate outer surface (26) and an inwardly extending web portion (48), having a free distal end (Fig. 5: proximate 42) separate from the other legs to provide free access between the legs, terminating at a distal end formed, and a foot (42) on the distal end of the leg. Robb does not disclose that the legs diverge outwardly from the table to form a segment of a cone or that the legs terminate at a distal end formed on the web portion. Yung discloses a rebar chair where the legs (26a)

Art Unit: 3635

diverge outwardly to form a cone and the leg terminates at a distal end formed on a web (26). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the legs diverge outwardly in order to provide for a more stable product and have the web extend so that the leg terminated at the distal end formed on the web because the web would result in increased strength of the overall product.

Claim 2: the table is circular and the ears are located so as to be between the annularly spaced locations from which the legs extend (see Fig. 4: generally).

Claim 5 and 27: the outer surface portion of each leg converges adjacent the distal end (see Fig. 5: 26 where the leg converges prior to the foot portion 42) to provide space proximal to the distal end into which concrete may flow.

Claims 19 and 38: the table has a generally horizontal top surface, but the prior art of record does not disclose the angle of divergence of the legs. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because applicant did not state a criticality for the necessity of the limitation and the prior art of record is capable of meeting the limitation as claimed.

Art Unit: 3635

Claim 24: Robb discloses a rebar support chair comprising a cradle (28, 30) for supporting engagement with a rebar, legs (26) having proximal ends fixed relative to the cradle, the legs extending downwardly from the cradle at annularly spaced locations, each leg has a generally T-shape cross section (leg and a single web portion) with an arcuate outer surface portion (26) and an inwardly extending reinforcing web portion (48), a free distal end portion separate from the other legs to provide access between the legs, and a foot on the distal end of each leg, where the foot includes traction means (the bottom of the foot) in the form of an irregular surface (the round shape is irregular as best understood by the examiner) formed at the distal end of each leg. Robb does not disclose that the legs diverge outwardly from the table to form a segment of a cone or that the legs terminate at a distal end formed on the web portion. Yung discloses a rebar chair where the legs (26a) diverge outwardly to form a cone and the leg terminates at a distal end formed on a web (26). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the legs diverge outwardly in order to provide for a more stable product and have the web extend so that the leg terminated at the distal end formed on the web

Art Unit: 3635

because the web would result in increased strength of the overall product.

Claims 10-12 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robb and Yung and further in view of Haslem (U.S. Patent No. 6,069,522).

Claims 10 and 32: the chair is unitary construction (Fig. 3: generally) formed of plastic and the web portion (48) is tapered which would reduce in depth toward the distal end of the leg, but Robb in view of Yung does not disclose that the material is polymeric. Haslem discloses a member made of polymeric material (Col. 8, lines 5-10). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the chair in Robb and Yung of polymer because a polymer is a plastic and would function equally as well with the plastic member.

Claim 11: the chair is a unitary construction and formed of plastic and the web portions join beneath the table (via portion 30), but Robb in view of Yung does not disclose that the material is polymeric. Haslem discloses a member made of polymeric material (Col. 8, lines 5-10). It would have been obvious at the time the invention was made to a person having



Art Unit: 3635

ordinary skill in the art to make the chair in Robb and Yung of polymer because a polymer is a plastic and would function equally as well with the plastic member.

Claim 12: the chair is a unitary construction and formed of plastic, the legs are disposed in pairs on opposite sides of the table and the web portions extend inwardly to provide an arch beneath and integrally formed with the table (see Fig. 5: generally) but Robb in view of Yung does not disclose that the material is polymeric. Haslem discloses a member made of polymeric material (Col. 8, lines 5-10). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the chair in Robb and Yung of polymer because a polymer is a plastic and would function equally as well with the plastic member.

Claims 3, 4, 18, 25, 26 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wirges (WO 90/01600) in view of Robb.

Claims 3 and 25: Wirges discloses a rebar support chair comprising a table or cradle (26) having diametrically opposed ears (proximate 52) extending upwardly therefrom, the ears are adapted to engage a rebar therebetween, legs (36) fixed to and extending downwardly from the table at generally equally

Art Unit: 3635

annularly spaced locations therearound, each leg is a generally T-shaped cross-section within arcuate outer surface portion (36) and a web portion (38), diverging outwardly from the table so that the outer surface portion defines a segment of a cone, terminating at a distal end formed on the web portion, a foot (34) on the distal end of each leg, wherein the foot includes traction means (58) in the form of an irregular surface (portion 58 is irregular to portion 34) formed on the web portion (via portion 34) at the distal end of the leg. Wirges does not disclose the web extends inwardly, however Robb discloses a rebar chair with inwardly extending web portions (48). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the webs extend inward because an inward facing web would be functionally equivalent to an outwardly extending web and would perform equally as well.

Claims 4 and 26: the irregular portions are serrations in that they can punch through the soil (see Fig. 1, generally).

Claim 18: Wirges discloses a rebar support chair comprising a table (12) having opposed ears (23) extending upwardly therefrom, the ears are adapted to engage a rebar, legs (36) fixed to and extending downwardly from the table at generally equally annularly spaced locations, each leg is generally T-shaped cross section with an arcuate outer surface portion and a

Art Unit: 3635

web portion (38), the legs diverge outwardly from the table so that the outer surface portion defines a segment of a cone and terminate at a distal end formed on the sep portion, a foot (34) on the distal end of each leg, a bearing member (56) for securement to the distal ends of the legs to support the legs on soft soil, the member is a plate having a planar top surface and slots (60) formed in the plate and extending through the plate, the slots being aligned with and receiving the distal ends of the legs (via portions 58) and having opposed side surfaces in snug engagement with opposite side surfaces of the distal ends. Wirges does not disclose the web extends inwardly, however Robb discloses a rebar chair with inwardly extending web portions (48). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the webs extend inward because an inward facing web would be functionally equivalent to an outwardly extending web and would perform equally as well.

Claim 37: Wirges discloses a rebar support chair comprising a cradle (26) for supporting engagement with a rebar, legs (36) fixed relative to and extending downwardly from the cradle at annularly spaced location, each leg being a generally T-shaped cross-section with an arcuate outer surface portion (36) and a reinforcing web portion (38), diverging outwardly from the

Art Unit: 3635

cradle so that the outer surface portion defines a segment of a cone, and terminate at a distal end formed on the web portion to the inside of the outer surface portion, a foot (34) on the distal end of each leg, a bearing member (56) for securement to the distal ends of the legs to support the legs on soil, the member comprising a plate having a planar top surface and slots (60) formed in and extending through the plate, the slots aligned with and receiving the distal ends of the legs (via portion 58) and having opposed side surfaces in engagement with opposite side surfaces of the distal ends. Wirges does not disclose the web extends inwardly, however Robb discloses a rebar chair with inwardly extending web portions (48). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the webs extend inward because an inward facing web would be functionally equivalent to an outwardly extending web and would perform equally as well.

#### ***Response to Arguments***

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3635

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. V. G./  
Examiner, Art Unit 3635

*W. V. G.*  
*3/19/08*